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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/634,723	08/05/2000	Sher (Karim) . Sachedina	BOYKP103us	2558
7590 10/31/2005			EXAMINER	
Himanshu S Amin Amin Eschweiler & Turocy LLP 24th Floor National City Center 1900 East 9th Street Cleveland, OH 44114			MEINECKE DIAZ, SUSANNA M	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/634,723

Applicant(s)

SACHEDINA, SHER (KARIM)

Examiner

Susanna M. Diaz

Art Unit

3623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 18 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 101.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1,3-8,11,16,21-33,41-48,57 and 58.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

*Susanna Diaz*  
Susanna M. Diaz  
Primary Examiner  
Art Unit: 3623

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are non-persuasive. As per the objection to claim 48, Applicant argues that "in order to infringe claim 48, all the acts recited in claim 41 must also occur." The Examiner respectfully disagrees. Claim 48 essentially covers the software that can potentially be used to perform the method of claim 41. In other words, one who creates the software can infringe on claim 48 without necessarily running the software, which is the subject of independent claim 41. Therefore, the Examiner submits that one can indeed infringe upon dependent claim 48 without infringing on independent claim 41. Regarding the rejection of claims 57 and 58 under 35 U.S.C. 112, 2nd paragraph, Applicant argues that reciting "a computer system" without specifying any system elements is proper. The Examiner respectfully disagrees. First, claims 57 and 58 recite a mere preamble; there is no claim body. Second, an apparatus is defined by its structure and there is no structure recited to define the computer system elements. Third, if Applicant continues to submit that the "computer system" is the sole component of the recited system, then single means issues might be raised in the future. In reference to the art rejection, Applicant argues that Groat does not teach an impact value derived from base data. As explained in previous Office actions as well as during the most recent interview, the Examiner maintains that the terms "derive" and "impact value" are very broad. Groat discloses various equations used to calculate financial relationships among multiple accounts. Any equation defines an impact of one variable on another and the calculated quantity can be said to be derived, or based on, a function of the recited variables and constants. For example, if  $A = B * C$ , wherein B is a constant and C is a variable, then A is derived from B and C. Furthermore, the value of B or C impacts the value of A and therefore directly or indirectly contributes to an impact value in relation to A. A similar analysis can be made of the equations disclosed in Groat. In conclusion, Applicant's arguments are not persuasive.